

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

4 Adv. Case No. 19-08288-shl

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6 In the Matter of:

7
8 PURDUE PHARMA L.P.,

9
10 Debtor.

11 - - - - - x

12 BRIDGES et al.,

13 Plaintiffs,

14 v.

15 PURDUE PHARMA L.P., et al.,

16 Defendants.

17 - - - - - x

18
19 United States Bankruptcy Court

20 300 Quarropas Street, Room 248

21 White Plains, NY 10601

22
23 March 21, 2023

24 11:09 AM

1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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1 HEARING re OMNIBUS HEARING

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3 HEARING re Doc. #5501 Notice Of Agenda

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5 HEARING re Doc. #5425 Application For Interim Professional
6 Compensation Re: Dechert LLP

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8 HEARING re Doc. #5421 Application For Interim Professional
9 Compensation Re: King & Spalding LLP

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11 HEARING re Doc. #5422 Application For Interim Professional
12 Compensation Re: Davis Polk & Wardwell

13

14 HEARING re Doc. #5441 Application For Interim Professional
15 Compensation Re: Jones Day

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17 HEARING re Doc #5412 Application For Interim Professional
18 Compensation Re: Ernst & Young LLP

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20 HEARING re Doc #5443 Application For Interim Professional
21 Compensation Re: AlixPartners, LLP

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23 HEARING re Doc #5444 Application For Interim Professional
24 Compensation Re: Skadden, Arps, Slate, Meagher & Flom LLP

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1 HEARING re Doc #5432 Application For Interim Professional
2 Compensation Re: PIT Partners LP

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4 HEARING re Doc #5416 Application For Interim Professional
5 Compensation Re: Grant Thornton LLP

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7 HEARING re Doc. #5423 Application For Interim Professional
8 Compensation Re: Reed Smith LLP

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10 HEARING re Doc. #5458 Application For Interim Professional
11 Compensation Re: Cornerstone Research

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13 HEARING re Doc. #5438 Application For Interim Professional
14 Compensation Re: Jefferies LLC

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16 HEARING re Doc. #5437 Application For Interim Professional
17 Compensation Re: Cole Schotz P.C.

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19 HEARING re Doc. #5440 Application For Interim Professional
20 Compensation Re: Province, LLC

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22 HEARING re Doc. #5435 Application For Interim Professional
23 Compensation Re: Akin Gump Strauss Hauer & Feld LLP

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1 HEARING re Doc. #5439 Application For Interim Professional
2 Compensation Re: Kurtzman Carson Consultants LLC

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4 HEARING re Doc. #5436 Application For Interim Professional
5 Compensation Re: Bedell Cristin Jersey Partnership

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7 HEARING re Doc. #5431 Application For Interim Professional
8 Compensation Re: Brown Rudnick LLP

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10 HEARING re Doc. #5433 Application For Interim Professional
11 Compensation Re: FTI Consulting, Inc.

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13 HEARING re Doc. #5429 Application For Interim Professional
14 Compensation Re: Otterbourg P.C.

15 HEARING re Doc. #5428 Application For Interim Professional
16 Compensation Re: Gilbert LLP

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18 HEARING re Doc. #5434 Application For Interim Professional
19 Compensation Re: Kramer Levin Naftalis & Frardcel LLP, 1

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21 HEARING re Doc. #5430 Application For Interim Professional
22 Compensation Re: Houlihan Lokey Capital, Inc.

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24 HEARING re Doc. #5445 Application For Interim Professional
25 Compensation Re: Caplin & Drysdale

1 HEARING re Doc. #5418 Application For Interim Professional
2 Compensation Re: Kleinberg, Kaplan, Wolff & Cohen, P.C.

3
4 HEARING re Doc. #5427 Application For Interim Professional
5 Compensation Re: Pullman & Comley, LLC

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7 HEARING re Doc. #5417 Application For Interim Professional
8 Compensation Re: Bielli & Klauder, LLC

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10 HEARING re Doc. #5447 Notice Of Hearing / Notice Of Tenth
11 Interim Fee Hearing

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13 HEARING re Doc. #5459 Notice Of Hearing / Supplemental
14 Notice Of Tenth Interim Fee Hearing

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16 HEARING re Doc. #5474 Motion To Authorize / Motion Of
17 Debtors For Authority To Enter Into Funding Agreement

18
19 HEARING re Doc. #5475 Declaration Of Terrance Ronan In
20 Support Of Motion of Debtors For Authorization To Enter Into
21 Funding Agreement

22
23 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
24 v. Purdue Pharma L.P. et al *** ORAL ARGUMENT REGARDING
25 MOTIONS TO DISMISS ***

1 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
2 v. Purdue Pharma L.P. et al, Doc. #24 United States Of
3 America's Notice Of Hearing Re: Motion To Dismiss Adversary
4 Proceeding (Lawrence Fogelman)

5

6 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
7 v. Purdue Pharma L.P. et al, Doc. #25 United States Of
8 America's Memorandum Of Law Re: Motion To Dismiss Adversary
9 Proceeding (Lawrence Fogelman)

10

11 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
12 v. Purdue Pharma L.P. et al, Doc. #27 Purdue Pharma L.P.'s
13 Motion To Dismiss Adversary Proceeding Filed On Behalf Of
14 Purdue Pharma L.P. (Kaminetzky, Benjamin)

15

16 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
17 v. Purdue Pharma L.P. et al, Doc. #28 Purdue Pharma L.P.'s
18 Memorandum Of Law In Support Of Debtor Defendant's Motion To
19 Dismiss Adversary Complaint (Kaminetzky, Benjamin)

20

21 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
22 v. Purdue Pharma L.P. et al, Doc. #29 Official Committee Of
23 Unsecured Creditors' Joinder To Debtors' Memorandum Of Law
24 In Support Of Motion To Dismiss Adversary Proceeding
25 Complaint (Dizengoff, Ira)

1 HEARING re Adversary proceeding: 21-07088-shI Bridges et al
2 v. Purdue Pharma L.P. et al, Doc. #35 Plaintiffs Response To
3 Motion To Dismiss Filed On Behalf Of Creighton Bloyd, Stacey
4 Bridges (Early, Valrey)

5
6 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
7 v. Purdue Pharma L.P. et al, Doc. #36 United States Of
8 America's Reply Memorandum Of Law In Further Support Of The
9 Motion To Dismiss The Adversary Complaint (Fogelman,
10 Lawrence)

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12 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
13 v. Purdue Pharma L.P. et al, Doc. #37 Purdue Pharma L.P.'s
14 Reply In Further Support Of Motion To Dismiss Adversary
15 Complaint (Kaminetzky, Benjamin)

16
17 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
18 v. Purdue Pharma L.P. et al, Doc. #40 Notice Of Hearing
19 Motion Regarding Motions To Dismiss Adversary Complaint
20 (Marc Tobak)

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25 Transcribed by: Sonya Ledanski Hyde

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20 JENNIFER BRAGG

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12 UDAY GORREPATI
13 ROCHELLE GUITON
14 SARAH HARBUCK
15 TAYLOR HARRISON
16 JACOB R. HERZ
17 MARSHALL SCOTT HUEBNER
18 MITCHELL HURLEY
19 AARON JAVIAN
20 GREGORY JOSEPH
21 JASPINDER KANWAL
22 MARC KESSELMAN
23 DAVID KLAUDER
24 SHAUN C. LEE
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4 EDAN LISOVICZ
5 EMILY MACKAY
6 JENNIFER MADDEN
7 EUNICE MIN
8 KEVIN MCCARTHY
9 MAURA KATHLEEN MONAGHAN
10 GEORGE O'CONNOR
11 JAMES FRANKLIN OZMENT
12 KATHERINE PORTER
13 RACHAEL RINGER
14 CHRISTOPHER ROBERTSON
15 JEFFREY J. ROSEN
16 JASON RUBINSTEIN
17 HEATHER SAYDAH
18 ALEC SCHWARTZ
19 PAUL KENAN SCHWARTZBERG
20 J. CHRISTOPHER SHORE
21 MARC F. SKAPOF
22 JOSEPH SORKIN
23 PETER SPROFERA
24 ROBIN SPIGEL
25 MICHAEL SPINELLI

1 ERIC STODOLA
2 MARC JOSEPH TOBAK
3 GERARD UZZI
4 MELISSA VAN ECK
5 SHMUEL VASSER
6 ELI J. VONNEGUT
7 HEATHER A. WATTERS
8 THEODORE WELLS, JR.
9 FRED WILLUMSON
10 NATHAN YEARY
11 KAILIA ZAHARIS
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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York. And we are here this morning for an omnibus hearing in the Purdue Pharma LP Chapter 11 case. It's jointly administered. And we will start, as we always start with these hearings, with appearances. So let me find out who is here on behalf of the Debtors.

MR. HUEBNER: Good morning, Your Honor. For the record, Marshall Huebner with Davis Polk on behalf of the Debtors. Can I be heard clearly by the Court?

THE COURT: You can be heard crystal clear. Thank you.

MR. HUEBNER: Terrific. Thank you, Your Honor.

THE COURT: Oh behalf of the Official Committee of Unsecured Creditors?

MR. LISOVICZ: Good morning, Your Honor. Edan Lisovicz of Akin Gump Strauss Hauer & Feld on behalf of the Committee.

THE COURT: All right. I know we also have folks here from the adversary proceeding, 21-7088, brought by Stacey Bridges and Creighton Bloyd. Let me find out who is here on behalf of the plaintiffs in that case.

MR. OZMENT: Your Honor, this is Frank Ozment, and I am here on behalf of Plaintiffs.

1 THE COURT: All right. And on behalf of
2 Defendants in that case?

3 MR. FOGELMAN: Good morning, Your Honor. This is
4 Larry Fogelman from the U.S. Attorney's Office for the
5 Southern District of New York on behalf of the United
6 States.

7 THE COURT: All right. Good morning. And I
8 wasn't sure if there was any particular counsel who is
9 handling the Defendant's Purdue Pharma specifically in that
10 adversary proceeding.

11 MR. TOBAK: Good morning, Your Honor. Marc Tobak,
12 Davis Polk & Wardwell LLP. And I will be handling the
13 adversary proceeding for the Debtors.

14 THE COURT: All right. Good morning. With that,
15 I know there are lots of appearances on the Zoom registry
16 here as is the case whenever we have hearings in this
17 particular matter. But I'm not sure that there are other
18 folks who intend to speak. So rather than try to guess and
19 throw out some names here and perhaps hear crickets, I will
20 simply ask if there's any other party that needs to make an
21 appearance at this time for today.

22 MR. KLAUDER: Good morning, Your Honor. David
23 Klauder. I am the court-appointed fee examiner in the case.
24 The fee applications are on. To the extent that Your Honor
25 wants to hear from me, I may be heard. Thank you.

1 THE COURT: All right. Thank you very much. Good
2 to have you here. Anyone else?

3 MR. GOLD: Good morning, Your Honor. Matthew Gold
4 from Kleinberg Kaplan Wolff & Cohen. We are one of several
5 fee applicants. I don't know whether Your Honor is --
6 hopefully Your Honor will not be needing to speak to us. It
7 is (indiscernible). But I did want to make a record that we
8 are on participating if Your Honor has any questions.

9 THE COURT: All right. I realize there are a lot
10 of fee applications on for today. And so here's what I can
11 say to folks. I don't need all those appearances now. If,
12 obviously, people need to speak, they can speak. But then
13 they can make their appearance at that time rather than have
14 everyone enter sort of a protective appearance. So I think
15 we'll be good that way. So if you have a fee application on
16 and you don't know of any issues currently, you can keep
17 your powder dry, as Judge Chapman used to like to say. And
18 if you need to speak, obviously happy to hear from you later
19 in the hearings.

20 Anyone else who needs to make an appearance? All
21 right.

22 Thank you all for being here. And with that, I'll
23 turn it over to you, Mr. Huebner, to kick us off.

24 MR. HUEBNER: Sure. Your Honor, if I may,
25 obviously, we are always hunting to keep costs and expenses

1 down and to minimize unnecessary burden, not a first request
2 without other people having to ask permission, that as soon
3 as the fee applications are done virtually everyone should
4 leave this hearing because I think that's what they're here
5 for except for the very small number of people who are
6 actually necessary for the few remaining agenda items after
7 the fee application.

8 THE COURT: All right. That sounds entirely
9 appropriate and wise. So with that, it sounds like we
10 should go to the fee applications first. And take it away.

11 MR. HUEBNER: Sure, Your Honor. Yeah. So let me
12 give you an omnibus review, Your Honor. So obviously you
13 also haven't seen us in a while because our favorite omnibus
14 hearing of all is the one that gets cancelled. And I think
15 we've achieved that several times in the last two months,
16 which is a good indicator of I think hopefully a properly-
17 done case, including keeping fees down.

18 I'm also happy to announce that it is my
19 understanding the fee examiner has actually reached
20 agreement with all of the professionals as to which the fee
21 examiner has been working and (indiscernible) applications
22 on for today, as we have done since these cases started. I
23 believe Your Honor was okay with that process the last time
24 we did this, which was your first time. We do have a single
25 omnibus order for efficiency's sake that reflects --

1 assuming that the Court has no further questions, which
2 obviously is the main event for today that is remaining that
3 reflects the reductions agreed to bilaterally in each case
4 between the fee examiner and each affected professional.
5 And so we obviously could go down every one of them, but it
6 also would be reflected in the form of omnibus order that
7 would show that the further reductions agreed to, for
8 example.

9 Just by way of example in the case of Davis Polk,
10 we had already written off \$185,143.50, which was almost
11 eight percent of the application, before we even filed it.
12 Because that's just what we do. We go through things really
13 carefully. And if we think for one reason or another we
14 should write stuff off, we do. We then agreed to an
15 additional set of reductions on top of the 185 of about
16 \$15,000, bringing us to a total of over \$200,000 and over
17 eight percent.

18 So I don't know if the Court needs more recitation
19 from any professionals, but just indicative. The fee
20 examiner has always, at least in our case, sent a very
21 thoughtful letter with a variety of questions and requests
22 for further information and some concerns about categories.
23 We have a set of productive exchanges, as we have now had
24 for several years running in this case that should have been
25 over a very long time ago. But that's not for today. And

1 reached an accommodation that was sensible.

2 So obviously it's the Court's pleasure to talk to
3 us and track as of course the Court sees fit. But that is
4 all I actually had to say.

5 THE COURT: All right. Yes. So I am perfectly
6 fine with one order. That seems to be appropriate. And I
7 have no objection to that. And so my thought would be to
8 just group the applications for today the same way you group
9 them in the agenda. There's A through L for Debtor's
10 professionals, N through R for the Official Committee, S
11 through X for Ad Hoc Committee of Governmental and other
12 Contingent Litigation Claimants, Professionals. Y for the
13 multistate government entities group. Z and AA for the
14 nine's professionals, and BB for the fee examiner. And so
15 with the idea that for each of those groups, you'll just
16 open it up for anybody who wishes to be heard, starting with
17 the fee examiner.

18 So I'll take, Mr. Huebner, your comments to be
19 you're starting us off on the Debtor's professionals. And
20 with that, that's A through L on the agenda, which is filed
21 on the docket of course. And so I'll turn it over to the
22 fee examiner if there's anything the fee examiner wants to
23 address for the Debtor's professionals.

24 MR. KLAUDER: Good morning, again, Your Honor.
25 David Klauder. Nothing specific to address. Mr. Huebner

1 correctly recited the process and the result, at least as
2 specifically as it relates to Davis Polk. Similar process
3 went through for all the Debtor professionals, and there's
4 full resolution on this tranche of fee applications.

5 THE COURT: All right.

6 MR. KLAUDER: So nothing more to add.

7 THE COURT: All right. Thank you very much. And
8 let me ask if there's anyone who does wish to be heard on
9 the applications of debtor's professionals A through L. And
10 just to be clear, that's Dechert LLP, Arnold & Porter, King
11 & Spalding, Davis Polk, Jones Day, Ernst & Young,
12 AlixPartners, Skadden Arps, PJT Partners, Grant Thornton,
13 Reed Smith, and Cornerstone Research. And my apologies for
14 truncating folks' names. I'm sure there's somebody who is
15 further down the list of partners whose name I've left out
16 in some of these firms. But just for ease of
17 identification.

18 So I'm not hearing any responses, and I didn't see
19 any objections on the docket based on the record before me.
20 And I am happy to approve those interim fee applications
21 that are listed on today's docket as an uncontested matter
22 reflecting the requests made by those professionals and the
23 reductions that either came about before the applications
24 were filed by the professionals including the reductions or
25 the results of conversations with the fee examiner.

1 So moving right along to the applications related
2 to the Official Committee. I'm not sure who is taking the
3 laboring oar on those.

4 MR. LISOVICZ: Good morning, Your Honor. Again,
5 Edan Lisovicz of Akin Gump Strauss Hauer & Feld on behalf of
6 the Committee.

7 Similar to what Mr. Huebner said, each of the
8 Committee's professionals I believe all took voluntary
9 reductions to their fees before filing their fee
10 applications with the Court. And thereafter, we received
11 comprehensive reports from the fee examiner. And where
12 appropriate, each of the professionals agreed to additional
13 reductions that will be reflected in the proposed order that
14 will be submitted to Your Honor. Akin Gump, just go give an
15 example, wrote off approximately \$130,000 of our fees before
16 we filed any of our fee applications with the court, and
17 then we agreed to write off an additional \$18,000 after
18 discussing with the fee examiner.

19 THE COURT: All right. Thank you very much. And
20 I will turn it over to the fee examiner for anything the fee
21 examiner might want to add as to applications M through R,
22 which are Jefferies LLC, Cole Schotz PC, Province LLD, Akin
23 Gump Strauss Hauer & Feld, Kurtzman Carson Consultants LLC,
24 and Bedell Cristin Jersey Partnership.

25 Anything from the fee examiner?

1 MR. KLAUDER: Nothing further to add. Thank you,
2 Your Honor.

3 THE COURT: All right. Thank you very much. And
4 let me -- I didn't see any objections filed on the docket,
5 which is why the matter is listed as uncontested. But I'll
6 open it up to anyone else who wishes to be heard on the
7 Official Committee of Unsecured Creditors professionals, and
8 that is the interim applications on for today.

9 I will let the record reflect that I don't hear
10 any further responses. And based on the record before me,
11 including having reviewed the interim applications on for
12 today, the Official Committee, and hearing the record of the
13 discussions of the fee examiner, I'm happy to approve the
14 interim applications M through R on the agenda, as have been
15 modified after conversations with the fee examiner.

16 So turning next through applications S through X.
17 Brown Rudnick, FTI Consulting, Otterbourg PC, Gilbert LLP,
18 Kramer Levin Naftalis & Frankel, Houlihan Lokey Capital Inc.
19 These are applications of the Ad Hoc Committee of Government
20 and Other Contingent Litigation Claimant professionals. I'm
21 not sure who is taking the laboring oar on these.

22 MR. GANGE: Good morning, Your Honor. Caroline
23 Gange of Kramer Levin on behalf of the Ad Hoc Committee.
24 Can you hear me clearly?

25 THE COURT: I can hear you just fine. Thank you.

1 MS. GANGE: Similar to the Debtors and the
2 Official Committee, members of the Ad Hoc Committee took
3 voluntary reductions prior to filing the interim fee
4 applications. And certain of the firms have also agreed to
5 additional reductions with the fee examiner which will be
6 reflected in the order to be filed on the docket I believe
7 this afternoon.

8 THE COURT: All right. Thank you very much.
9 Anything from the fee examiner on these particular
10 applications?

11 MR. KLAUDER: Nothing to add. Thank you, Your
12 Honor.

13 THE COURT: All right. Thank you. And last but
14 not least, I'll turn it over to anyone else who might wish
15 to be heard on these applications listed as S through X on
16 the agenda.

17 All right. Once again, let the record reflect
18 that I'm not hearing any responses. And I also note that
19 there are no objections filed on the docket. So after
20 review of the applications and based on the record of
21 today's hearings, I am happy to approve the interim
22 applications S through X of these particular professionals
23 as modified after their conversations with the fee examiner.

24 And so next up is one application of Caplin &
25 Drysdale for the Multi-State Governmental Entities Group.

1 And I'm not sure who is taking the podium for that.

2 MR. LIESEMER: Good morning, Your Honor. Jeffrey
3 Liesemer on behalf of Caplin & Drysdale, counsel to the
4 Multi-State Governmental Entities Group. Can you hear me
5 all right?

6 THE COURT: I can hear you fine.

7 MR. LIESEMER: As Your Honor has said, we have
8 filed a fee application. I am not aware of any issues, but
9 I am available to answer any questions.

10 THE COURT: All right. Thank you very much. I'll
11 turn it over to the fee examiner.

12 MR. KLAUDER: Your Honor, with respect to Caplin
13 & Drysdale, no issues. We had a dialogue with them and
14 worked through the questions I had. So nothing further to
15 add. Thank you.

16 THE COURT: All right. Thank you. As I note,
17 there were no objections filed to the application, but I'll
18 turn it over to anyone else who wishes to be heard as the
19 application of Caplin & Drysdale identified as Y on the list
20 of uncontested matter interim fee applications. Anyone wish
21 to be heard? All right.

22 Once again, there is no one who wishes to be
23 heard. And once again, based on the record before me
24 including the application and today's hearing, I am happy to
25 approve the interim fee application has been submitted.

1 So next up is "The Nine's Professionals", which
2 are applications Z and AA. First with Kleinberg Kaplan
3 Wolff & Cohen, and second of Pullman & Comley. And so I'll
4 turn the podium to whoever is handling those.

5 MR. GOLD: Thank you, Your Honor. Matthew Gold
6 from Kleinberg Kaplan Wolff & Cohan. Can you hear me
7 clearly?

8 THE COURT: I can hear you just fine. Thank you.

9 MR. GOLD: Thank you, Your Honor. I don't know if
10 I'm taking the lead. I can say for Kleinberg Kaplan that we
11 had a dialogue with the fee examiner and agreed to a
12 reduction of fees which are reflected in the order that will
13 be presented to Your Honor. I am aware of no other
14 objections to our application.

15 THE COURT: All right. And on behalf of the
16 Pullman firm?

17 MR. GOLDMAN: Yes. Good morning, Your Honor.
18 Irve Goldman for Pullman & Comley. The examiner had some
19 helpful comments about our (indiscernible), which we'll be
20 sensitive to in the future. But we did not have a
21 recommended reduction, so we are of course satisfied with
22 the allowance of the amount we requested.

23 THE COURT: All right. Thank you very much. And
24 I'll turn it over to the fee examiner for these two
25 applications.

1 MR. KLAUDER: Correct, Your Honor. No issues, or
2 issues that we raised informally were resolved. So no
3 objection to the approval of those fee applications.

4 THE COURT: All right. Thank you very much. And
5 once again, and last but not least, I'll turn it -- I'll
6 open the floor for anybody who wishes to be heard on these
7 two applications. All right. Let the record reflect that
8 there is no one who wishes to be heard. And, again, the
9 record reflects that is no application of these fees. So
10 based on the applications that were filed and that I have
11 reviewed and the record of today's hearing, I'm happy to
12 approve these two interim applications.

13 And so last but not least, we get to the
14 application of the fee examiner listed as BB in the agenda.
15 And let me find out who is taking the laboring oar on that.

16 MR. KLAUDER: Your Honor, David Klauder for the
17 fee examiner. This is consistent with our previous
18 applications in this case. There's been no filed
19 objections. Happy to answer any questions you may have
20 specifically of me.

21 THE COURT: All right. Thank you very much. And
22 I'll just turn it over to Debtor's counsel if there's
23 anything to add or you'd like to say as to the application
24 of the fee examiner.

25 MR. HUEBNER: Your Honor, definitely not. I was

1 just going to close up this section of the hearing.

2 So I actually would like to upgrade my request to
3 a request assuming that the Court has no further questions
4 that virtually everyone drop off this hearing right now and
5 turn off --

6 THE COURT: Hold on one second. I just want to
7 throw it open to the floor if anyone has any comments as to
8 the fee examiner's application. All right. Let the record
9 reflect that I'm not hearing any comments. And again, same
10 ruling based on my review of the application and the record
11 of today's hearing, I'm happy to approve the interim
12 application.

13 And before anybody drops off, I appreciate that
14 folks are here, and I appreciate it turns out we spent a
15 certain amount of time where there was absolutely no
16 objections because you all have done your jobs properly.
17 Obviously in a case of this magnitude, it's important to
18 have process for purposes of everyone understanding how a
19 case like this works and to continue with that. So thank
20 you for being here.

21 And with that, I would echo the guidance just
22 provided that it's time for everybody who is here for fee
23 applications and who is not here for anything else to leave
24 the virtual room and enjoy the rest of your day.

25 MR. HUEBNER: Your Honor, one small request from

1 my end. My favorite number in our fee application was that
2 I only billed 71.1 hours for Purdue in three months, which I
3 used to bill every week, and if often felt like every day.
4 Given that there's a lot going on with Silicon Valley Bank
5 case, whose hearing is in a few hours, would Your Honor mind
6 terribly if I joined those dropping off given --

7 THE COURT: Not at all. That's perfectly fine.
8 Thank you very much.

9 MR. HUEBNER: Okay.

10 THE COURT: Good to see you. Be well.

11 MR. HUEBNER: Thank you, Your Honor. Have a good
12 day.

13 THE COURT: Have a good day.

14 All right. So next up on the agenda I believe is
15 the Funding Agreement Motion. I'll turn it over to counsel.

16 MR. ROBERTSON: Thank you, Your Honor. For the
17 record, Christopher Robertson, Davis Polk & Wardwell, on
18 behalf of the Debtors. Can I be heard clearly in the
19 courtroom?

20 THE COURT: Yes, you can. Thank you very much for
21 asking.

22 MR. ROBERTSON: Thank you, Your Honor. Next item
23 on the agenda is the Debtor's motion for authorization to
24 enter into a funding agreement with Harm Reduction
25 Therapeutics, Inc. The motion was filed at Docket 5474.

1 This motion is unopposed.

2 Very briefly, Your Honor, HRT has developed a low-
3 cost intranasal naloxone device which will be called Revive.
4 The relief requested today will support HRT's efforts to
5 make this lifesaving overdose rescue medication available
6 over the counter at a lower price than similar for-profit
7 product hopefully as early as the beginning of 2024.

8 Support for the development of OTC naloxone continues to be
9 a key public health initiative with the goal that I am
10 confident all creditors share, abatement of the opioid
11 crisis and saving lives.

12 The requested \$9 million of funding is both modest
13 in context of these cases and will enable HRT to fund scale
14 up for distribution and commercial scale of Revive.

15 As discussed in the motion, the initial \$5 million
16 will be due upon the issuance of binding purchase orders for
17 the intranasal delivery devices with the remaining \$4
18 million due upon commencement of any factoring of the Revive
19 product by HRT's contract manufacturer.

20 Unless Your Honor has any questions, we
21 respectfully ask that the request be granted.

22 THE COURT: All right. Thank you very much. Is
23 there any party that wishes to be heard as to this motion?

24 All right. Hearing no response, I am happy to
25 grant the motion. I appreciate that education provided in

1 the moving papers to give me a sense of this as obviously I
2 am not the judge who originally had this case. And so I
3 very much appreciate all of that information which certainly
4 injects a note of optimism which is quite welcome. And so
5 this is good news and I am very happy to approve it. Thank
6 you very much.

7 MR. ROBERTSON: Thank you, Your Honor. At this
8 time, I would turn the podium over to my colleague, Marc
9 Tobak, who will be handling the adversary proceeding.

10 THE COURT: All right. So I am happy to do that
11 as well. So I will turn it over to him.

12 MR. TOBAK: Good morning, Your Honor. This is
13 Marc Tobak, Davis Polk & Wardwell, for the Debtor-Defendant,
14 Purdue Pharma LP. Can I be heard clearly?

15 THE COURT: You can be heard very clearly. Thank
16 you.

17 MR. TOBAK: Perfect.

18 Plaintiff's complaint, Your Honor, is an attempt
19 to use the rare and extraordinary remedy of equitable
20 subordination to collaterally attack a settlement between
21 the Debtors and the United States. And it should be
22 dismissed with prejudice for two basic and independent
23 reasons. First, because it's a collateral attack on a final
24 order. Litigation of course, Your Honor, has a beginning
25 and it has an ending. And litigation over the Debtor's

1 settlements with DOJ should have ended in December 2020 when
2 the time to appeal this court order approving them lapsed
3 and when no appeal was filed. Plaintiffs are now barred
4 from challenging that 9019 order to which they did not
5 object and to which they did not appeal from.

6 And second, in Plaintiff's own words -- and this
7 is from Page 11 of their opposition brief -- the complaint
8 is a request for equitable subordination about what must be
9 done with the fruits of the Government's prosecution. And
10 while that is certainly what the complaint is about, it is
11 certainly what equitable subordination under the Code is not
12 about. Equitable subordination under the Code cannot be
13 used to reorder the priorities of valid claims to achieve an
14 outcome that Plaintiff would like better. Instead, the
15 Plaintiff must first allege and then later prove that the
16 Government engage in inequitable conduct that worsened
17 Plaintiff's bankruptcy outcomes and that subordination is
18 consistent with the Bankruptcy Code and bankruptcy law. And
19 Plaintiffs haven't adequately alleged any of those three.

20 Now, before addressing each of these two and
21 independent reasons for dismissal in greater detail, it's
22 important to situate the complaint and the DOJ resolution in
23 the broader scope of these cases. And it's important to
24 focus on the fact that approval of the DOJ resolution was
25 one of the watershed moments of these bankruptcy cases. And

1 it was such an important step because the United States had
2 asserted truly massive claims against the Debtors; a
3 forfeiture claim of at least three-and-a-half billion
4 dollars, allegedly nondischargeable criminal claims of \$6.2
5 billion, and billions more in other criminal and civil fine
6 claims. Super-priority, nondischargeable claims of that
7 amount could easily have consumed the entire estate and left
8 nothing for other creditors including personal injury
9 claimants such as Plaintiffs.

10 The DOJ resolution announced on October 21st,
11 2020, and the subject of the 9019 motion filed that day
12 provided a global resolution with the DOJ that preserved an
13 unlocked value for Purdue's other creditors. Pursuant to
14 the plea agreement and to the civil settlement agreement,
15 Purdue agreed, among other things, to plead guilty to three
16 criminal charges, to provide the United States with an
17 allowed super-priority administrative expense claim against
18 PPLP in the amount of \$2 billion -- that's the forfeiture
19 judgement claim -- and to provide the United States with
20 \$3.544 billion in a criminal fine claim and \$2.8 billion in
21 a civil fine claim.

22 Importantly, in exchange, the United States
23 agreed, among other things, to provide a credit, the
24 forfeiture judgement credit, that offsets that forfeiture
25 judgement by up to \$1.775 billion dollar for dollar against

1 value that was distributed or otherwise conferred by PPLP on
2 account of the claims of tribal, state, and local
3 governments.

4 And what that means, Your Honor, is that of that
5 agreed \$2 billion of the super-priority forfeiture claim,
6 the Federal Government effectively agreed that \$1.775
7 billion could be redirected to the abatement and the
8 restitution efforts that would be carried out by tribal,
9 state, and local governments. And those governments in turn
10 agreed under the plan and under the trust distribution
11 procedures established by the plan to dedicate their
12 recoveries to assist communities and individual impacted by
13 the opioid crisis, including, for example, to provide
14 medication-assisted treatment to opioid victims.

15 Now, the United States did not provide for
16 restitution as a component of Purdue's proposed criminal
17 sentence. And that's because, as stated on Page 4 of the
18 plea agreement, it was believed that restitution was not
19 administratively feasible and would complicate and prolong
20 the sentencing process. And note the sentencing process is
21 separate of course from this bankruptcy case.

22 What Plaintiffs want now is for the Federal
23 Government to be forced to forego that last \$225 million of
24 the forfeiture judgement claim because of their exercise of
25 prosecutorial discretion in the plea agreement.

1 Now, objections to the 9019 motion were due on
2 November 10th, 2020. And while some objections were filed,
3 Plaintiffs did not object. They did not object despite
4 having filed their proofs of claim in February and July of
5 2020, many months before the 9019 motion was filed and many
6 months before objections were due.

7 After a nearly all-day hearing, Judge Drain
8 entered the 9019 order on November 18th, 2020. That had an
9 immediate and profound impact on this case. As just one
10 example, only a few days later, on November 24th, 2020, PPLP
11 entered a guilty plea. Now, no party appealed the 9019
12 order, and the order became final and unappealable on
13 December 2nd, 2020.

14 And that brings us to the first reason the
15 complaint should be dismissed; it is an impermissible
16 collateral attack on that final and now unappealable order.
17 And it's a collateral attack because the Plaintiffs seek to
18 nullify central aspects of that order.

19 The order itself not only authorizes entry into
20 the DOJ resolution, it specifically provides that upon entry
21 of a judgement of conviction consistent with the plea
22 agreement, the United States will have the forfeiture
23 judgement claim with "priority over any and all
24 administrative expense claims, and that the allowed claims"
25 -- that's the civil and criminal claims -- "shall be

1 unsubordinated and shall not be subject to subordination."

2 So if Plaintiffs received the relief that they
3 request, it would be impossible to carry out those terms of
4 the 9019 order. Claims that the order decrees will be
5 allowed with either administrative priority or shall be
6 unsubordinated (indiscernible) subordinated and when party
7 asks for relief, it would undo an order that's final, that's
8 a collateral attack. And it's a bedrock principle of
9 federal procedure that a party that did not object to an
10 order and that did not appeal that order cannot collaterally
11 attack it.

12 And at least twice the Supreme Court has forbidden
13 collateral attacks on final bankruptcy court orders. And it
14 has done so even when those orders in one case exceeded the
15 subject matter jurisdiction of the bankruptcy court. And
16 I'm thinking of Travelers Indemnity v. Bailey, 557 U.S. 137,
17 or in another case where the order plainly and undisputedly
18 seemingly violated the Bankruptcy Code. And that's in
19 United Student Aid Funds v. Espinosa, 559 U.S. 260.

20 So the time to litigate this Court's order ended
21 on December 2, 2020 when the time to appeal expired.
22 Plaintiffs don't appear to dispute that law, but instead
23 argue that the 9019 order is not in fact final, but instead
24 is contingent. But that's wrong.

25 It's true that the 9019 order provides that

1 certain contingencies must happen before the time for the
2 Debtor's performance. That is to say the plea agreement
3 must be accepted before the Government is provided with all
4 of the claims agreed to in the DOJ resolution. But that
5 doesn't make the 9019 order anything but final.

6 In fact, we know that because the Second Circuit
7 has held that a 9019 order is a final order even when it
8 authorizes a settlement that requires a second court's
9 approval, just like the plea agreement here must be approved
10 and accepted by the sentencing court. And that's in Bennett
11 Funding, 439 F.3d 155, 164. This Court's 9019 order was
12 final when entered, and Plaintiff's attempt to undo it now
13 is a forbidden collateral attack.

14 Now, we could stop here, Your Honor, but I'll turn
15 to that second independent set of reasons that the complaint
16 should be dismissed in case Your Honor reaches those issues.
17 And that's that Plaintiffs failed to state a claim for
18 equitable subordination.

19 Section 510(c) authorizes the Court to subordinate
20 one claim to another under principles of equitable
21 subordination. And those principles require that Plaintiffs
22 now allege and later prove, one, that the Government engaged
23 in extreme inequitable misconduct; two, that the
24 Government's alleged conduct harmed Plaintiffs and conferred
25 an unfair advantage on the Government; and three, that

1 subordination would be consistent with bankruptcy law. And
2 that's the three-part test articulated in (indiscernible).

3 Now, Plaintiffs fail to allege facts that would
4 supply any one of these three requirements. Plaintiffs
5 allege that DOJ acted inequitably first by failing to seek
6 restitution as part of the agreed sentence of Purdue in the
7 plea agreement, and second, by being "complicit in the
8 opioid crisis and improperly enriching itself by failing to
9 appropriately regulate and prosecute debtors."

10 It's worth pausing a moment on what Plaintiffs ask
11 that this Court do. Plaintiffs ask this Court second guess
12 the exercise of prosecutorial and policy discretion by the
13 United States Department of Justice in a plea agreement and
14 then second guess Congress and the executive branch in how
15 they should have how they should have acted differently to
16 regulate debtors. And all of this would be in derogation of
17 very well-settled doctrines of immunity which we describe at
18 length in our brief.

19 So it's no surprise that Plaintiffs didn't
20 identify a single case in which a bankruptcy court accepted
21 such an invitation to subordinate the United States' claim
22 based on the United States' policy and prosecutorial
23 discretion. And, respectfully, this Court shouldn't be the
24 first.

25 But moreover, even if Plaintiffs could surmount

1 that obstacle, the fact remains that none of the conduct
2 alleged meets the extraordinarily high standard for
3 equitable subordination. The caselaw establishes an
4 extremely high bar, as Your Honor knows. The words that the
5 caselaw uses to describe the conduct that meets the standard
6 are "egregious, improper, and wrongful, so gross and
7 egregious as to be tantamount to fraud, misrepresentation,
8 overreaching, or spoliation; conduct that involves moral
9 turpitude, illegality, or breach of a legally-recognized
10 duty." And that is all from, for example, 80 Nassau
11 Associates, 169 B.R. 832.

12 Nothing Plaintiffs allege comes anywhere close to
13 meeting that extraordinarily high bar. And you can see that
14 by comparing it to the kind of case that does meet that bar.

15 For example, in Picard v. Magnify, which comes out
16 of the Madoff Ponzi scheme, the defendant allegedly received
17 \$120 million out of the Madoff Ponzi scheme and allegedly
18 knew that the Madoff scheme would justify that amount by
19 fabricating falsified and backdated trading records.

20 Or in another example, Judge Drain ordered
21 equitable subordination of claims of a party that Judge
22 Drain concluded violated the automatic stay through "a
23 literally false and intentionally misleading advertising
24 campaign." And that was in Windstream, 627 B.R. 32. That's
25 the kind of conduct that's required for equitable

1 subordination. And that's also the kind of conduct that is
2 not alleged in Plaintiff's complaint.

3 Turning to the second prong, injury. Injury in
4 this context means that the Government's conduct must have
5 harmed the bankruptcy results of other creditors in this
6 case. But Plaintiffs can't allege that and haven't alleged
7 that here because, as discussed earlier, the United States
8 asserted forfeiture claims and non-dischargeable claims that
9 could have consumed the entire states and left nothing for
10 other creditors. The DOJ resolution, and in particular the
11 forfeiture judgement credit, greatly enhanced the recoveries
12 of other creditors. And the plan, through the efforts of
13 parties like the UCC and the Ad Hoc Group and others
14 provides for recoveries to personal injury victims. So it's
15 no surprise that Plaintiff's subordination claim is not
16 based on the treatment of their personal injury claims in
17 this case. Instead, it's based on a hypothetical claim, a
18 claim that doesn't exist, and a claim that would only come
19 into being if the United States had obtained a criminal
20 judgement against Purdue before confirmation of a plan if in
21 that hypothetical case the hypothetical sentencing court
22 ordered restitution if that hypothetical order of
23 restitution provided the plaintiffs receive restitution and
24 if in that scenario there was enough money left in the
25 estate and a few enough set of creditors that were the

1 beneficiaries of the restitution order that Plaintiffs could
2 recover something from that estate and could recover more
3 than they are scheduled to recover under the plan. And
4 that's a lot of ifs, Your Honor. Plaintiffs don't cite any
5 authority, and we aren't aware of any, that holds that an
6 equitable subordination claim can be premised on losing the
7 chance to receive a hypothetical recovery on a hypothetical
8 claim.

9 And finally, subordination would also be
10 inconsistent with the Bankruptcy Code for two reasons. The
11 first is that the MVRA expressly states that it does not
12 create a cause of action "in favor of any person against the
13 United States." And that's from 18 U.S.C. 3664(p). The
14 complaint is an attempt to use equitable subordination to do
15 exactly that; to do in bankruptcy court what could not be
16 done in district court, to sue the United States in,
17 Plaintiff's own words, to obtain the rights that Congress
18 has granted under the MVRA. It is inconsistent with the
19 Bankruptcy Code to allow Plaintiffs to use equitable
20 subordination to circumvent the procedural limitations on
21 the MVRA. And second, to end where we began, Plaintiffs in
22 their own words argue that the suit asked that this Court
23 subordinate the Government's claims because it would be
24 better to dedicate funds to medical treatment than put that
25 money in the treasury. But that's exactly what a bankruptcy

1 court cannot do. As this Court well knows and as the
2 Supreme Court has cautioned, a court is not free to use
3 equitable subrogation to adjust the priorities of valid
4 claims because the court perceives that the outcome, that
5 the recoveries on those claims are inequitable. And that's
6 from U.S. v. Noland, 517 U.S. 535. Plaintiff can't
7 subordinate a claim to achieve a result it would like
8 better. And there's no surprise. Nothing would be more
9 self-defeating in this case and more potentially inequitable
10 than to risk toppling what the UCC in its pleading describes
11 as a numerous and delicately-balanced intercreditor
12 settlements that allow the plan to provide billions of
13 dollars in abatement and victim compensation and to avoid
14 years of costly and wasteful intercreditor litigation.

15 And unless the Court has any questions for me, I
16 will now cede the podium to Mr. Fogelman from the United
17 States until time for reply.

18 THE COURT: All right. Thank you very much. And
19 I think it makes sense to hear from Mr. Fogelman so all of
20 the movants are heard from, and then I'll hear from the
21 other side. So, Mr. Fogelman?

22 MR. FOGELMAN: Good morning, Your Honor. Can you
23 hear me clearly?

24 THE COURT: I can hear you just fine. Thank you.

25 MR. FOGELMAN: Thank you, Your Honor. Your Honor,

1 I'll be brief.

2 The Plaintiff's complaint should be dismissed
3 because they forfeited their right to raise the allegations
4 that they have raised in their adversary proceeding. As
5 Debtor's counsel explained, the treatment for the
6 government's claims was resolved nearly three years ago
7 through a 9019 motion that provided how the government's
8 claims would be treated. The plaintiffs had filed proofs of
9 claim months before that proceeding. They had ample
10 opportunity if they objected to the treatment of the
11 government's claims to raise those objections in connection
12 with the 9019 motion. There were multiple objections to the
13 9019 motion, and there was a full-day hearing to address
14 those objections and to argue about the relief provided in
15 the 9019 order that the Court approved.

16 And the Plaintiffs never objected, they did not
17 appear, did not make any arguments at the hearing, they did
18 not file any appeal. And for those reasons, Your Honor,
19 this case should be dismissed as they forfeited their rights
20 to now come back years later and make these arguments.

21 Beyond that, Your Honor, we are prepared to rest
22 on the submission we made in our brief addressing equitable
23 subordination unless the Court has any questions for us.

24 THE COURT: All right. No, that's fine. Thank
25 you very much. I appreciate your comments. And with that,

1 I'll turn to the Plaintiffs to hear their argument.

2 MR. OZMENT: Good morning, Your Honor. My name is
3 Frank Ozment and I am here for Creighton Bloyd and Stacey
4 Bridges.

5 At the outset, a housekeeping matter. Your Honor
6 may have noticed that Valrey Early had also entered an
7 appearance for these parties. Mr. Early is a seasoned
8 bankruptcy practitioner. Unfortunately, he has been in the
9 hospital.

10 THE COURT: I'm sorry to hear that.

11 MR. OZMENT: Well, thank you. He is well-known
12 and well-loved in the local bankruptcy bar, and I think he's
13 got a good prognosis.

14 But bearing in mind the admonition to plead
15 (indiscernible), I think I'll just go forward on my own in
16 light of the briefs that Val put together.

17 THE COURT: Yeah. And I will just stop you to say
18 that obviously oral argument is to highlight various things
19 that are in the briefs and to sort of have a conversation.
20 So I have read all the briefs. I will read them again after
21 we are done here today, as is my practice. And so certainly
22 your brief covered the matters well. And so obviously happy
23 to hear from you. And again, please pass along my best
24 wishes for a speedy recovery to your colleague.

25 MR. OZMENT: Thank you. Speaking first to the

1 context that -- Your Honor mentioned that you were
2 relatively new to the case. I want to give just a word of
3 context to the kind of recovery or restitution that we're
4 looking for here. It isn't necessarily and is unlikely to
5 be a cash distribution to people who are in recovery. The
6 Mandatory Victim Restitution Act authorizes subsidies for
7 the medical treatment of victims of crimes that involve
8 fraud, and that's what we're looking for here.

9 When people are in recovery generally speaking,
10 they have a much higher, if not to say dramatically higher,
11 likelihood of recovery if they receive medicine-assisted
12 therapy. That consists of two components. One is the
13 actual medicine itself, which is generally methadone,
14 buprenorphine, or naltrexone. And then that combined with
15 therapy. And so what we're looking for here is the medical
16 subsidy that would support those kinds of recovery.

17 With respect to the argument that the movants
18 advanced at the outset, we would respectfully submit that
19 the Section 9019 order is not (indiscernible). And in that
20 respect, I think it's helpful to emphasize one thing that we
21 did not really give much treatment to in our briefs, and
22 that is what Judge McMahon said in her order that dealt with
23 the appeal. Of course the Government or the U.S. Trustee
24 had raised issues in that appeal and also raised issues not
25 just about the confirmation order, but also about the

1 disclosure statement. And at Footnote 71 of our opinion,
2 Judge McMahon pointed out that she would not take up the
3 argument regarding the disclosure statement because, like
4 everything else connected with the confirmation order, it
5 has fallen by the wayside.

6 We do have a 9019 order that authorized the entry
7 of a plea agreement. But to the extent that 9019 order may
8 have once served as a bar to recovery, it does no longer in
9 light of the district court --

10 THE COURT: Well, let me ask you about that. So
11 the confirmation order was what was appealed. And this
12 order was not appealed, and there's still an appeal to the
13 Second Circuit and perhaps an appeal that might go even
14 further. And so clearly there isn't an ultimate resolution
15 yet. And so -- but the confirmation has been appealed, but
16 this order wasn't. And so how am I to understand the
17 significance of that?

18 MR. OZMENT: It's a very important distinction.
19 That's part of what is important to focus on in light of the
20 Bennett Funding case. Bennett Funding was about whether an
21 order was appealable I think under 1291 to the Appeals
22 Court, 28 U.S.C. 1291. And it was really holding that, yes,
23 it is. Even though there are loose ends to be wrapped up,
24 even if some of those loose ends are major, that is a final
25 order for purposes of appeal. It didn't treat whether the

1 order was res judicata or collaterally estopped. There are
2 orders every day, particularly in my ordinary field of
3 practice, which is civil rights, that are appealable because
4 they are in some sense final within the (indiscernible)
5 statute conferring jurisdiction or appeal, but they are not
6 res judicata. And a prominent example of that would be
7 things like qualified immunity. So if anybody asserts
8 qualified immunity, it's denied, well, they can appeal that
9 even though that's not something that's going to bar anybody
10 (indiscernible) res judicata (indiscernible).

11 Does that answer your question?

12 THE COURT: Well, yes and no. So taking what you
13 just said and going from there, so if this is a final order,
14 the 9019 is a final order for purposes of appeal, then it's
15 the law of the case and -- there doesn't seem to be much of
16 a dispute in the papers that granting the relief you request
17 will require that order to be essentially overridden with a
18 different result. Am I missing something on that?

19 MR. OZMENT: I wouldn't characterize it quite that
20 way, Your Honor. Because our request was fairly limited.
21 We are not asking to upset at this stage of the proceedings
22 the impact of the settlement, for example, on the states.
23 What we are saying is that the behavior of the United States
24 was such that we should be equitably subordinated to the
25 amount that is going to be disbursed to them within three

1 days of the entry or the approval of the plea agreement.

2 THE COURT: But doesn't that -- all settlements
3 are a series of back and forth, right? And so as part of
4 what the United States ended up with in that settlement
5 where it decided to forego a substantial rights that it
6 might otherwise have, it got this certain amount. And I
7 understand you're not challenging other aspects of the 9019,
8 but a settlement is a bundle of rights. And this would seem
9 to be like the game Jenga; you're trying to pull one out
10 without toppling over the whole thing. But clearly this
11 amount of money under your view, which was provided to go to
12 the United States under the settlement would no longer go to
13 the United States under the settlement in the same way. I
14 mean, that seems pretty clear. Am I right?

15 MR. OZMENT: Your Honor, I don't want to avoid
16 your question. But I would very, very, very humbly and
17 respectfully submit that's not exactly right. Whether they
18 can withdraw from the settlement is --

19 THE COURT: Well, they're not trying to withdraw
20 from the settlement. So withdraw is not the right word.
21 The settlement exists. Can the settlement stay as is if the
22 relief you're requesting is granted? And I think the answer
23 is no. Some parts of it can, but other parts can't.

24 MR. OZMENT: I think the plea agreement will stand
25 because that's a matter governed by Rule 11 of the Rules of

1 Criminal Procedure. And in the event that, for example, we
2 came in and we said there's something under the law of
3 equitable subordination that requires Purdue to pay twice as
4 much, you know, that's got to be the deal. Well, in that
5 event, under Rule 11(c), they would have the right to
6 withdraw from the plea agreement.

7 If we come in and we say, look, the United States
8 still -- Purdue is still getting what they're supposed to
9 get out of the deal under the plea agreement. But, you
10 know, in the bankruptcy court, money will be directed
11 differently. That's not going to authorize the United
12 States to withdraw from the plea agreement. And, quite
13 frankly, I think it's unfathomable that they would do so. I
14 think it would be politically extraordinary for them to take
15 that measure. So that's my answer as best I can on it.

16 THE COURT: All right. Feel free to move along.

17 MR. OZMENT: Thank you. With respect to the other
18 arguments regarding the 9019 order as we've talked about and
19 I won't reiterate here at any length, but it does have a lot
20 of pretty serious contingencies in it that would ordinarily
21 in the context of res judicata prohibit an order from having
22 a preclusive effect, even if that order were appealable.
23 And to that end, I think colloquy at the, excuse me, hearing
24 on a 9019 order is instructed because there was a great deal
25 of emphasis on exactly whether the United States would have

1 the right to take anything under that deal and only after
2 confirmation. So that's another link, if you will, to
3 confirmation.

4 With respect to the argument that the movants made
5 regarding law of the case, we would submit that Judge
6 McMahon's remarks are (indiscernible) with respect to what
7 is the standing of orders after the confirmation order was
8 vacated.

9 Going over to the argument regarding immunity and
10 prosecutorial discretion, I don't think immunity or concepts
11 of it here are at all relevant. If we were, you know, the
12 Inspector General or the Department of Justice and we're
13 looking into, you know, the settlement, then that's a
14 context where immunity would be important. If we were
15 trying to hold the United States civilly liable in some way
16 --

17 THE COURT: Well, I would respectfully ask you
18 this question that challenges that premise, which is holding
19 the United States liable is one thing, but saying that a
20 criminal case should take a certain path as opposed to a
21 different path, isn't that another form of challenging
22 prosecutorial discretion? Or said another way, the
23 Government's right to proceed as the sovereign in handling
24 criminal matters.

25 MR. OZMENT: And if we were before the Court, as

1 parties sometimes do appear before district courts in
2 connection with a plea agreement and objecting to it at the
3 appropriate time, then that would be the question there.
4 We're not here to upset whatever the deal is for the Debtor
5 in the plea agreement. We're here to say under the plea
6 agreement, you get what you're getting, Purdue, and the
7 United States is getting what it's getting, but here's -- we
8 believe their interest should be subordinated to
9 (indiscernible). And that gets into the merits of the
10 equitable subordination. But we're not trying to interfere
11 with at this point the (indiscernible) and U.S. District
12 Court in New Jersey. Do that we would -- of course then we
13 would have to move for leave for the -- leave for relief
14 from the automatic stay and then enter an appearance there -
15 -

16 THE COURT: Well, even then you wouldn't be able
17 to -- you wouldn't be able to tell -- you would be able to
18 advocate to that district court what to do, but you wouldn't
19 be able to dictate exactly what the result is. You would be
20 a party advocating as opposed to being able to tell the
21 government what position it should take. And, frankly, I
22 have the same concern that -- how do I have the authority to
23 tell the government what position it should take in a
24 criminal matter?

25 MR. OZMENT: I don't believe -- I don't want you

1 to take that position, Your Honor. Nobody could tell them
2 what to do in a criminal matter. I do want you to tell them
3 what to do with the money that was received in that matter
4 in this case.

5 THE COURT: But again, I think that -- how does
6 that not impact the settlement and everything related --
7 well, how does that not impact -- doesn't tell the
8 Government what it's supposed to do in those proceedings.
9 Because the settlement contemplates certain things are going
10 to happen -- I'm sorry, it sounds like it contemplates
11 certain things are going to happen in district court. And
12 wouldn't this be telling the government what sort of -- a
13 high dive into a glass of water. You can do something, but
14 you can only do these things because it has to work out this
15 way.

16 MR. OZMENT: Your Honor, I want to answer your
17 question by focusing on very practical steps that that would
18 involve. So if Your Honor today, or at some point more
19 likely in the future, held that we were entitled to
20 equitable subordination, for the agreement to fall apart, a
21 settlement agreement to fall apart in a way that would
22 impact the bankruptcy, the United States would have to go
23 back to the district court in New Jersey and say we're not
24 getting \$225 million that we anticipated. That money is
25 going to go toward purposes mandated by the mandatory victim

1 restitution act, and thus we would like to somehow withdraw
2 our support to the guilty plea.

3 Number one, it's difficult to imagine the United
4 States doing that, but let's assume that they did. Second,
5 I don't know that that would give them the right under Rule
6 11 of the Rules of Criminal Procedure to back out of the
7 plea agreement. Number three, I think the United States
8 district court judge would still be well within her rights
9 to say, well, Purdue, you can plead guilty and, you know, I
10 can sentence you. And if the United States doesn't support
11 it, that's fine. I've already agreed.

12 So I don't think this is -- I don't think
13 (indiscernible) money within the bankruptcy case, if you
14 will, necessarily impacts what is going to transpire in U.S.
15 district court. And that's what I take to be the keystone
16 of you say unraveling the settlement agreement.

17 And beyond that, I don't know how else I can
18 explain it. I may be mistaken, but that's how I see it,
19 Your Honor.

20 THE COURT: All right. Anything else, Counsel?

21 MR. OZMENT: Briefly touching on the merits, if
22 you will, of the equitable subordination. If Your Honor
23 believes that we have not adequately alleged anything
24 regarding the merits of any subordination. We would ask
25 that it be dismissed without prejudice -- with prejudice but

1 (indiscernible) we think we have (indiscernible).

2 We have been -- or the clients have been adversely
3 impacted. And of course once you get (indiscernible), then
4 you not only get the award, you get a lien for the award.
5 You're a secured creditor. That's a statutory lien that
6 would ordinarily (indiscernible) preference. So for that
7 reason alone it seems to me that there's been a fairly
8 significant impact on the rights of the clients in
9 bankruptcy.

10 As far as without precedent, I agree, this is not
11 a matter where there is strong precedent. I have not found
12 a case where the United States abandoned the victims under
13 the Mandatory Victim Restitution Act on a premise that was
14 factually unsupportable. And yet in the course of doing so,
15 enriched itself. And that's what happened here. There were
16 approximately --

17 THE COURT: Well, let me ask you about that.
18 That's a consistent theme in your pleadings.

19 MR. OZMENT: Yes.

20 THE COURT: But I'm having trouble understanding
21 that word in the context. If the government was entitled to
22 receive a much higher amount of money and in order for other
23 creditors to receive funds and use those funds for abatement
24 and other purposes, that the government agreed to take a lot
25 less, how that's sort of unjust enrichment here. It's

1 agreeing to take a lot less so that its claim didn't
2 potentially wipe out all recovery in the case. I guess I'm
3 a little confused about the continual theme of sort of
4 unjust enrichment by the Government here. So what's your
5 response to that?

6 MR. OZMENT: My response to that is that Congress,
7 number one, has mandated that victims have this restitution.
8 Number two, if the victims had gotten restitution, then they
9 would have been secured creditors. And that would have
10 certainly altered the terrain with respect to how things
11 worked out in the case.

12 THE COURT: But again, to get back to this issue,
13 that then mandates a certain course of conduct and certain
14 set of positions that you're saying the government has to
15 take in the criminal case.

16 MR. OZMENT: I don't think the government has to
17 take them. They didn't take them as a matter of fact. And
18 the question is what are the --

19 THE COURT: Your -- what you just said was the
20 mandated restitution that you were relying on for your
21 argument makes folks, victims secured creditors. But that
22 only happens if certain things happen in the criminal case
23 that -- that haven't happened. And so that would seem to
24 dictate the position that United States would have to take
25 in that criminal case to get to that result. And that gets

1 back to our prosecutorial discretion conversation, doesn't
2 it?

3 MR. OZMENT: I haven't thought of it that way, and
4 that's not what I mean to urge. What I mean to say is this,
5 that in light of whatever they did, or in light of what in
6 fact they have done, then the question is what follows. And
7 what they have done is they have ignored the Mandatory
8 Victim Restitution Act. Perhaps that was necessary to get a
9 deal. They have taken other steps in connection with the
10 plea agreement. They've taken other steps in connection
11 with the settlement agreement. Now, the question is what
12 happens to the bankruptcy court with the money that would
13 otherwise go to subsidizing medical treatment under the
14 statute. I think that's about as good as I can answer it,
15 Your Honor.

16 THE COURT: All right. Anything else, Counsel?

17 MR. OZMENT: Nothing further, Your Honor.

18 THE COURT: All right. Thank you very much. And
19 I'll turn to the movants briefly for a targeted reply.

20 MR. TOBAK: Good morning, Your Honor. Marc Tobak
21 from Davis Polk & Wardwell for the Debtors.

22 Just four points. Apologies while I'm attempting
23 to adjust our screen, which isn't cooperating. Okay.

24 So just four points. The first is on finality.
25 As Your Honor noted, the fact that an order is final and

1 subject to appeal immediately dovetails the question of
2 whether once that time to appeal has run, attacking that
3 order would be a collateral attack because there was res
4 judicata. And in bankruptcy in particular, the rules for
5 finality are different.

6 As Your Honor knows and as the Supreme Court
7 recently reiterated in their Ritzen Group case, finality is
8 really important in bankruptcy court because a bankruptcy
9 case is built order by order by order. And just as a party
10 can take an immediate appeal when an order disposes of a
11 discrete element of bankruptcy case, like the 9019 order, on
12 the other hand, when a party doesn't do that, it can't come
13 back later and attack that order collaterally.

14 And in terms of the question of whether there's
15 something so fundamentally wrong with the 9019 order that it
16 could be collaterally attacked or the terms of the
17 settlement, we don't have to look beyond the Espinosa case.
18 I mean, there's an order confirming a plan that discharges
19 student debt without making the required findings in
20 violation of two different provisions of the Bankruptcy
21 Code. But the problem was that the party that held that
22 debt didn't object. And when later the parties said that
23 order is void, it violated the law, and the bankruptcy court
24 has a duty to ensure that a plan conform to the Bankruptcy
25 Code, the Supreme Court said it's too bad, it's too late.

1 Once the time to appeal runs, if you don't object and if you
2 don't appeal, it's too late.

3 And next let's turn to Judge McMahon. The
4 confirmation order and the appeal from the confirmation
5 order for that reason didn't say anything about the 9019
6 order. The 9019 order was final years before the
7 confirmation order was entered and years before the
8 confirmation order was vacated by Judge McMahon's ruling on
9 appeal.

10 The question of what the plan may or may not be in
11 this case is separate from the question of whether the 9019
12 order is final. And under the current confirmation of the
13 case, the DOJ resolution will be -- ultimately be executed.

14 Now, let's go back to the question about immunity.
15 I will admit I had trouble understanding the point that this
16 isn't about what the Department of Justice ought to have
17 done, because this is exactly what Your Honor is being asked
18 to do, is to sit in judgement of the policy decisions of the
19 Department of Justice.

20 First, it's not that the Department of Justice
21 ignored the MVRA. We know in the plea agreement that the
22 Department of Justice found that the factual predicates for
23 not seeking restitution were met. And the question that
24 Plaintiff's counsel has raised is whether the Department of
25 Justice correctly reached that conclusion.

1 But more importantly, the question about the
2 government abandoning victims is even harder for me to
3 understand. The Government could have taken everything.
4 They agreed to take only \$2 billion in forfeiture. Then 88
5 percent of that amount was redirected to victim compensation
6 and abatement, including medical-assisted therapy that would
7 be carried out by the states. And it's that conduct,
8 keeping the \$225 million and not giving that as well as the
9 other 88 percent of the forfeiture judgement that Plaintiffs
10 argue is equivalent to fraud, to be complicit in the Madoff
11 Ponzi scheme or to sending out fraudulent messages and is
12 the kind of illegal, egregious, gross misconduct that would
13 support equitable subordination. Because, again, the
14 Government only gave up 88 percent of its super-priority
15 claim.

16 And that I think brings us back to the final
17 point. Your Honor, I couldn't say it better than a Jenga
18 tower. The question is what will happen if we take out one
19 of the blocks at the bottom or in the middle of the Jenga
20 tower? What will happen if the settlement, which was agreed
21 to and entered in the final order before the plan was
22 structured, before the creditors and the debtors and the
23 Sackler families had agreed to the final form of the plan
24 and those settlements.

25 And while Plaintiffs have been willing to

1 speculate about what would happen, the answer is we don't
2 know. And as fiduciaries, we can't gamble with billions of
3 dollars dedicated to victim compensation and abatement to
4 play a game of check and see what would happen. And that
5 all sets aside, Your Honor, the fundamental question that
6 there's no legal case for equitable subordination under the
7 Code has been made.

8 And so absent any further questions, the Debtors
9 will rest there.

10 THE COURT: All right. Thank you very much.

11 Mr. Fogelman, I believe you have the last word.

12 MR. FOGELMAN: Thank you, Your Honor. Nothing
13 further from the Government.

14 THE COURT: All right. Thank you.

15 MR. PREIS: Your Honor?

16 THE COURT: Yes.

17 MR. PREIS: Your Honor, it's Arik Preis from Akin
18 Gump Strauss Hauer & Feld on behalf of the Official
19 Committee.

20 We filed a joinder --

21 THE COURT: yes.

22 MR. PREIS: -- to the motion to dismiss.

23 Obviously I didn't speak earlier because we're just a
24 joinder. But if Your Honor would allow us, I'll just make
25 three very brief statements.

1 THE COURT: Well, it's a bit out of order, Mr.
2 Preis. I mean -- so if there are points that are somehow
3 unique to the Committee. But if they're points on the
4 argument, I think I've already had two folks argue on behalf
5 of the folks who filed, the movant. I have your joinder.
6 I am just -- I think your comments would likely start
7 another round of discussions. And I think it's been ably
8 covered by all the advocates here. But is there something
9 unique to the Committee that needs to be pointed out?

10 MR. PREIS: It was covered in our papers, our
11 position. So if you would prefer we don't -- our position
12 is a little bit unique, but it's covered in our papers. And
13 so --

14 THE COURT: Yeah, I have it. I think you're good.
15 So at this juncture, I would suggest that I take your papers
16 -- as I said, I've read them. I'll read them again. And I
17 certainly do understand. And that's why I phrased my
18 question is there something unique to the Committee. But if
19 it's been briefed, I've got it, and I think you're good to
20 go.

21 MR. PREIS: Thank you, Your Honor.

22 THE COURT: All right. With that, what I would
23 like to do is schedule a time Monday to provide you all with
24 a bench ruling. And I am flexible on time. So my initial
25 thought would be to pick 11:00 on Monday. But I could also

1 do it at 2:00. So if somebody is tied up with something at
2 11:00, we can easily segue to 2:00. But the first bid and
3 ask is 11:00. And if that works for folks, we'll stick with
4 that.

5 MR. ROBERTSON: Your Honor, that works for
6 Debtors.

7 THE COURT: All right. Mr. Fogelman?

8 MR. FOGELMAN: That works for the Government, Your
9 Honor. Thank you.

10 THE COURT: All right. And counsel for the
11 Plaintiffs?

12 MR. OZMENT: Yes, Your Honor. That's fine.

13 THE COURT: All right, great. So we'll do exactly
14 the same thing. Everybody will dial in on Zoom. And it
15 will just be for the purposes of providing a bench ruling on
16 today's motions that were argued. I would like to thank
17 everybody for their argument and wish you all a very good
18 rest of the day and see you next week. Thank you.

19 (Whereupon these proceedings were concluded at
20 12:17 PM)

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I N D E X

RULINGS

Page Line

Motion for Authorization to Enter into a

Funding Agreement With Harm Reduction

Therapeutics, Inc., GRANTED

29

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: March 23, 2023

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